

June ____, 2011

Honorable Joseph Martens
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-4500

Dear Commissioner Martens:

I write to request that the New York State Department of Environmental Conservation (DEC) immediately expand the scope of its efforts to revise the draft Supplemental Generic Environmental Impact Statement (SGEIS) pursuant to Executive Order No. 41.

With that goal in mind, I write to request that DEC address the issues described below.

I understand that DEC has been ordered to complete its revision by 7/1/11. The original draft SGEIS received such scathing criticism that Executive Order No. 41 was necessitated. I have never heard of a regulatory do-over of this magnitude in recent decades. I respectfully urge DEC to complete its revision without regard to any arbitrary deadline.

Executive Order No. 41

Just before leaving office, former Governor Paterson acknowledged the shortcomings of the draft SGEIS by signing Executive Order No. 41. It requires DEC to:

"complete its review of the public comments, make such revisions to the Draft SGEIS that are necessary to analyze comprehensively the environmental impacts associated with high-volume hydraulic fracturing combined with horizontal drilling, ensure that such impacts are appropriately avoided or mitigated consistent with the State Environmental Quality Review Act (SEQRA), other provisions of the Environmental Conservation Law and other laws, and ensures (stet) that adequate regulatory measures are identified to protect public health and the environment;"

DEC stated that its review and revision efforts would be limited to comments received prior to 12/31/09. You met with citizens on 3/23/11 to discuss a coalition letter that asks Governor Cuomo to require public comment in order to pinpoint all the technical, scientific, regulatory and legal issues that have come to light during the last 18 months.

An Associated Press (AP) article quoted you on the record saying: "Some people say we should reopen the process. We're looking at all of that,' Martens said. **'We're trying to solicit and digest all the information we can and put it into a document that addresses all the concerns raised to date** [emphasis added]. It's a really formidable task.'

Martens said **New York's permitting guidelines will address problems that have been seen in other states, particularly Pennsylvania, where Marcellus Shale drilling and fracking has been blamed for contamination of water wells and rivers** [emphasis added]."

See: <http://www.toxicstargeting.com/news/2011-05-23/ap-interview-ny-drilling-regs-may-take-all-summer>

Specific Requests for Immediate Action

I urge you fulfill your promise to require DEC's revision of the draft SGEIS to address all Marcellus Shale horizontal hydrofracturing concerns "raised to date," including the following specific matters.

1. There are nearly 11,000 signatories to a coalition letter that asked Governor Paterson to withdraw the fatally-flawed draft SGEIS and send it back to the drawing board. That letter documents a wide range of fires, explosions, polluted water supply wells, homes evacuated due to natural gas intrusion and massive gas drilling wastewater spills that still exceed clean up standards decades after occurring.

The letter also requests that the Governor address a wide range of concerns regarding inadequate gas release disclosure requirements, lack of financial surety to address gas hazards, failure to impose strict liability for clean up of gas hazards and the failure to establish a dedicated gas pollution clean up fund comparable to the spill remediation fund. Please address all those issues in DEC's revision.

See: http://www.toxicstargeting.com/MarcellusShale/coalition_letter

2. DEC excluded from the SGEIS proceeding a wide range of critical issues that were identified at its scoping hearings. I request that DEC re-assess those comments in light of developments since 2008 and include all concerns deemed to be within the scope of Executive Order No. 41.
3. The U. S. Environmental Protection Agency submitted extremely detailed comments regarding the inadequacy of the draft SGEIS and requested that DEC share co-lead agency status with the New York State Department of Health. EPA also wrote that DEC's 1992 GEIS is out-of-date in so many respects that it should not serve as the basis for developing new horizontal hydrofracturing regulations.

EPA specified numerous fundamental shortcomings, including: potential impacts to public health, water supply, water quality, wastewater treatment operations, local and regional air quality, management of naturally occurring radioactive materials and cumulative environmental impacts.

EPA's letter states: "EPA recommends that these concerns be addressed and essential environmental protection measures established prior to the completion of the SEQRA process." Given the enormous array of shale gas developments since 2009, EPA Administrator Lisa P. Jackson has been asked to update EPA's comments. I ask DEC to address all of EPA's concerns in the revised draft SGEIS.

See:

http://www.toxicstargeting.com/MarcellusShale/documents/comments/2009/31/12/epa_comments

See: <http://www.toxicstargeting.com/node/6729>

4. EPA is conducting a National Hydrofracturing Study. EPA Administrator Jackson has been asked to provide DEC with all pertinent documents compiled for that investigation. I request that DEC review those documents and address all concerns deemed within the scope of Executive Order No. 41.

5. *The New York Times* recently published a landmark three-part series about Marcellus Shale Gas wastewater hazards. That investigatory effort compiled more than 30,000 pages of documents, including, but not limited to: extensive gas drilling wastewater monitoring results, legal orders to halt gas drilling wastewater discharges to Publicly Owned Treatment Works, environmental assessments of gas drilling wastewater impacts on water quality and hundreds of EPA and State government documents detailing high concentrations of Total Dissolved Solids (TDS), petroleum hydrocarbons and radionuclides in gas drilling wastewater. I request that DEC review all those documents and address all concerns deemed within the scope of Executive Order No. 41.

6. Natural gas wastewaters have been documented to contain TDS up to 413,000 parts per million, Total Petroleum Hydrocarbons in the diesel range up to 72,600 parts per billion and a broad range of Radionuclides. These persistent pollutants can "pass through" "secondary" wastewater treatment systems, concentrate in residual sludges and cause worker hazards. I request that DEC review these data and address EPA's technical recommendations in its review. See pages 7-18 at:
http://www.toxicstargeting.com/sites/default/files/pdfs/docs_110303.pdf

7. According to the draft SGEIS, "*Flowback water recoveries reported from horizontal Marcellus wells in the northern tier of Pennsylvania range between 9 and 35 percent of the fracturing fluid pumped [emphasis added].*" (See page 5-97.) Those meager recovery

rates lead to the conclusion that horizontal hydrofracturing constitutes deep well injection of fluids that could threaten drinking water supply sources. DEC requires State Pollutant Discharge Elimination System (SPDES) permits for deep well injection of natural gas fluid. Those permits can only be granted on the basis of site-specific, individual EIS reviews.

Given DEC's long-standing policy, I request that Marcellus Shale horizontal hydrofracturing permits be subject to individual EIS proceedings instead of a Supplemental GEIS. DEC is requiring individual EIS reviews for the New York City and Syracuse watersheds. I believe all New Yorkers who drink water drawn from unfiltered groundwater sources in the Marcellus Shale formation must be afforded equal protection in every aspect of the letter and spirit of New York law. I request that DEC adopt that policy in its revised draft SGEIS.

8. I request that all discharges of gas drilling wastewater, including flowback as well as "produced" or "brine," to groundwaters be subject to New York State's GA (groundwater that supplies potable drinking water) effluent limitations. I ask DEC to adopt that policy in its revised draft SGEIS.

9. DEC concluded in its Final SGEIS Scope: *"In the absence of a pattern of incidents that indicates a regulatory weakness or gap, the occurrence of isolated accidents or violations do not of themselves constitute reason to re-open the GEIS [emphasis added]."* (See 8.3.2.)

DEC's assertion is directly contradicted by hundreds of spills reported to the agency as well as additional information compiled by Chautauqua, Cattaraugus and Allegany County Health Departments.

On November 9, 2009, detailed DEC spill information was released for public review that identified more than 270 incidents involving drill rig fires, explosions, homes evacuated due to gas drilling hazards, polluted water supply wells, gas drilling wastewater spills and various other oil/gas releases that had not been cleaned up. Many of those problems have exceeded remediation requirements for decades.

See: http://www.toxicstargeting.com/MarcellusShale/drilling_spills_profiles

On April 5, 2010, extensive information was released for public review that documented widespread natural gas impacts reported by the aforementioned health departments pursuant to a Memorandum of Understanding with DEC. Dozens of these problems were reported prior to the adoption of the GEIS in 1992 and have not yet been cleaned up.

See: http://www.toxicstargeting.com/MarcellusShale/documents/chautauqua_catta...

I request that DEC review these two sets of government data and revise its 1992 GEIS to address all reported environmental and public health concerns. I request that the revision be completed prior to adopting a revised draft SGEIS.

10. I request that DEC investigate its claim that: *"No known instances of groundwater contamination have occurred from previous horizontal drilling or hydraulic fracturing projects in New York State [emphasis added]."* (See: DEC Marcellus Shale homepage.)

See a videotaped interview with Mr. David Eddy, a resident of Independence, NY, who described how his drinking water supply well and house were reportedly impacted by toxic contamination caused by the hydrofracturing of a gas well across the street from his home: http://www.toxicstargeting.com/MarcellusShale/videos/andover_independence_ny

A U. S. Energy document is available for your review that reports toxic contamination of Mr. Eddy's water well, notes that the firm paid for a water treatment system and "put Mr. Eddy and his family in a hotel several nights during the initial impact." That document also discloses "U. S. Energy has offered Mr. Eddy compensation which he has refused."

See: http://www.toxicstargeting.com/sites/default/files/pdfs/us_energy.pdf and http://www.toxicstargeting.com/sites/default/files/pdfs/allegany_county.pdf

I request that DEC address Mr. Eddy's incident in its revision of the draft SGEIS.

11. Governor Cuomo has been alerted to extremely serious mortgage lending impacts reportedly associated with gas leases. Problems associated with real property devaluation and marketability could cause catastrophic economic troubles throughout New York. I request that DEC address this critical issue in its revision of the draft SGEIS.

See: <http://www.toxicstargeting.com/MarcellusShale/alerts/natural-gas-leasing-impacts-on-mortgage-lending>

12. A 1996 DEC investigation determined that: "New York State oil and gas production equipment and wastes are not significantly contaminated by naturally occurring radioactive materials (NORM). The concentrations of NORM found on oil and gas production equipment and wastes pose no threat to the public health and the environment. The research and analysis supporting this conclusion were performed in 1996. Direct measurements of the radioactivity at well sites were performed. Samples of scales, sludges, sediments, soils, water, rock, brines, waxes, and oils were taken and analyzed by gamma spectrometry."

See: <http://www.dec.ny.gov/chemical/23473.html>

These conclusions are contradicted by radionuclide data referenced by EPA: "such concentrations are considered elevated and many pose unacceptable human health risk

mainly via external exposure, inhalation of radon and thoron decay products, and to some degree via inadvertent ingestion. Although, most states have not yet formally classified oil and gas drill rig personnel as occupational radiation workers, at least health and safety measures should be considered to educate the personnel about radiation exposures and reduce their exposure to as low as reasonably achievable. The pipe scale and filter media could be the major sources of radiation exposure and need to be handled and disposed of appropriately.”

See page 8 at: http://www.toxicstargeting.com/sites/default/files/pdfs/docs_110303.pdf

I request that DEC address these concerns in its revised draft SGEIS.

13. Governor Cuomo received a 4/7/11 letter requesting that he bar the discharge of gas drilling wastewaters into Publicly Owned Treatment Works in the Finger Lakes Region of New York that are neither designed, constructed, maintained nor regulated to be able to handle those contaminated materials. Gas drilling wastewaters have been prohibited at POTWs in Pennsylvania and Ohio. I request that DEC address this concern in its revised draft SGEIS.

See: <http://www.toxicstargeting.com/MarcellusShale/documents/letters/2011/04/07/cuomo-letter>

14. Among the most disconcerting EPA documents obtained by *The New York Times* is a Regional Administrator Briefing Overview that contains a recommendation for a gas drilling moratorium in the New York City Watershed. See page 16 at: http://www.toxicstargeting.com/sites/default/files/pdfs/docs_110303.pdf

A recent article quoted EPA Region 2 Administrator Judith Enck: "I was at EPA Region 2 when we were preparing our comments, and there was a debate on whether or not to call for a moratorium on hydrofracking in the New York City watershed," Enck said. "And there was a difference of opinion. Some people did, some people didn't." See:

<http://www.wnyc.org/articles/wnyc-news/2011/apr/15/its-possible-albany-will-never-allow-fracking-agency-head-says/>

See below a 12/24/09 email sent by Mr. Phil Sweeney. It notes: "For the New York City watershed, we recommend that a precautionary approach be taken, and that a moratorium be established... [emphasis added]."

EPA evidently reversed its position on imposing a New York City gas drilling moratorium between when Mr. Sweeney publicly reported the moratorium on 12/24/09 and when Region 2 submitted formal comments to DEC on 12/30/09. I request that DEC investigate EPA's rationale for imposing the proposed moratorium and address that concern in its revision of the draft SGEIS.

From: "Sweeney.Philip@epamail.epa.gov" <Sweeney.Philip@epamail.epa.gov>
Sent: Thu, December 24, 2009 9:55:56 AM
Subject:

I am writing to notify you that EPA Region 2 has provided comments on the NYSDEC draft Supplemental Generic EIS for Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs.

One concern included in EPA's letter is that the analysis of cumulative and indirect impacts should be significantly expanded. We also recommend that a greater emphasis be placed on potential adverse health impacts. **For the New York City watershed, we recommend that a precautionary approach be taken, and that a moratorium be established,** which could be followed by a phased permitting plan which would limit the intensity and impacts of drilling activity. In addition to these highlights, the letter includes technical comments on issues including air quality, water quality, habitat protection, and radioactivity.

A press release about EPA's comment letter will be issued today, and a copy of the letter will be available on our website:

<http://www.epa.gov/region2/>

Philip Sweeney
EPA Region 2
NYC Water Supply Protection Team
Phone: 212.637.3780
Fax: 212.637.3887

15. I request that DEC address inadequate staffing and funding concerns documented in this internal memo as part of its revision of the draft SGEIS:
http://www.toxicstargeting.com/sites/default/files/dec_dobletter_Grannis2010-HL.pdf

16. Finally, a coalition letter with more than 5,000 signatories has been sent to Governor Cuomo to request a public comment period to address how the scope of the draft SGEIS must be expanded to include concerns that came to light after the proceeding began nearly three years ago. I request that DEC respond favorably to that request. Accepting written comments *ad hoc* is a poor way to "solicit input" on an important matter that could have irreparable impacts on New York's environment, public health and economy.

See: http://www.toxicstargeting.com/MarcellusShale/cuomo/coalition_letter

At least 64 Legislators are signatories to a similar letter to Governor Cuomo.

See:

<http://www.toxicstargeting.com/MarcellusShale/documents/letters/2011/04/13/assembly>

Conclusion

In conclusion, Executive Order No. 41 is an historic effort to require DEC to make sure that the environmental impacts associated with Marcellus Shale horizontal hydrofracturing are “appropriately avoided or mitigated” prior to the permitting of that activity. The concerns I respectfully ask DEC to address would help achieve that goal and serve as a model of effective government regulation for the nation as a whole.

I trust you will find my concerns self-explanatory. Thank you very much for your consideration and for your continuing public service.

Very truly yours,